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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940.

NO. 549

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, et al., *Petitioners*,

vs.

BRASHEAR FREIGHT LINES, INC., et al., *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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To the Honorable Charles Evan Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

Summary and Short Statement of Matter Involved.

Summary. In an injunction proceeding, arising under the provisions of Section 266 of the Judicial Code, a three-judge district court, Western District of Missouri, overruled defendants' Motion For Damages (R. 90) against seventy-six (76) common carrier truck operators, plaintiffs, and the surety on their injunction bonds. The Eighth Circuit Court of Appeals affirmed the order, with one judge dissenting.

The opinion (R. 113) sought to be reviewed holds that, although the Motion For Damages **should have been** referred back to the single judge who granted the temporary restraining order, to be tried independently of Section 266 of the

Judicial Code, the three-judge court, nevertheless, did not abuse its discretion in dismissing the proposed anciliary litigation. The dissenting opinion (R. 119) holds that the three-judge court was without jurisdiction to dismiss the ancillary matter.

Petitioners, Public Service Commission, State Highway Commission, Superintendent of State Highway Patrol, and the Attorney General, seek to have the opinion reviewed on the grounds that (1) it conflicts with itself; (2) it conflicts with other cases in the Eighth and other circuits; (3) it conflicts with cases of the Supreme Court; (4) it calls for the supervising control of the Supreme Court to clarify a matter of importance to the State of Missouri.

Short Statement. The history of the case may be briefly stated, as follows:

The aforesaid seventy-six (76) common carriers by motor vehicle filed their Bill In Equity, (R. 2), on May 15, 1937, in the District Court at Kansas City, attacking the validity of the schedule of common carrier truck fees in the Missouri Bus and Truck Law, Section 5272, Laws of Missouri, 1931, pp. 304-316, inclusive. A temporary restraining order (R. 20, 23) was granted. It remained in effect for a period of fifteen (15) months. Collection of the statutory fees in question was restrained thereby in the meantime.

The defendants timely filed an Amended Answer and Counterclaim (R. 63), alleging therein that, on behalf of the state of Missouri, they were entitled to a judgment against plaintiffs for statutory common carrier fees which plantiffs would have been compelled to pay, as annual and temporary license fees for the maintenance and repair of the public highways, except for the effectiveness of the temporary restraining order for a period of fifteen (15) months.

At the hearing on the injunction matter, the three-judge court stated (R. 81) that it would **"retain jurisdiction"** of the counterclaim until the injunction matter on the merits had been determined by it.

Several weeks later the Court, without further action concerning the counterclaim, entered its final decree (R. 69) on the merits of the injunction matter. The issues in the injunction matter were found for the defendants. The temporary restraining order was dissolved and the request for injunction was denied.

In the same decree, paragraph 4, as amended, (R. 76) the Court, after stating

> **"that it was in serious doubt as to the right of defendants to maintain such a counterclaim"**

dismissed the same

> **"without prejudice to the right of defendants, or either of them, to maintain an independent action or suit thereon, if they, or either of them shall be so advised."**

Realizing that plaintiffs could appeal directly to the Supreme Court from the adverse decree on their application for an injunction, and believing that jurisdiction of an appeal from the adverse decree of the three-judge court on the counterclaim, being ancillary to an injunction proceeding arising under the provisions of Section 266 of the Judicial Code, would be in the Supreme Court, defendants prosecuted their appeal from the adverse ruling on the counterclaim directly to the Supreme Court. The plaintiffs, however, did not appeal from the adverse decree on the injunction matter. Notwithstanding, it did not seem proper or necessary then that defendants should take another appeal to the Circuit Court of Appeals.

The Supreme Court, having before it only the direct appeal from the adverse ruling on the counterclaim, dismissed the direct appeal. It held that there was no proper appeal before it under Section 266 of the Judicial Code, and that it was without jurisdiction of the appeal on the counterclaim (Public Service Commission v. Brashear Freight Lines, Inc., et al., 306 U. S. 204, 83 L. Ed. 608).

The foregoing facts pertaining to the injunction and counterclaim proceedings set the stage for the present proceeding in certiorari pertaining to the Motion for Damages.

Further historical facts are as follows:

After the Supreme Court, for want of jurisdiction, had dismissed the aforesaid direct appeal taken from the adverse decree of the District Court on the counterclaim, it was too late for defendants to appeal from such adverse ruling of the three-judge court on the counterclaim to the Circuit Court of Appeals. They, therefore, conceived it to be proper to incorporate the same subject matter of the counterclaim pertaining to loss of the license fees in a Motion for Damages

against plaintiffs and the surety on their injunction bonds. They included also in said Motion for Damages (R. 90) a claim for expenses incurred in preparing and prosecuting their respective defenses.

The possible loss of the specific statutory fees mentioned in the Motion for Damages, collection of which had been restrained, was safeguarded by injunction bonds (R. 22, 30), in the amounts of Ten Thousand ($10,000.00) and Twenty Thousand ($20,000.00) Dollars, respectively. The former ran to the defendants (petitioners here), and the latter ran to the State of Missouri and the State Treasurer of the State of Missouri in addition to defendants.

The three-judge court overruled the Motion for Damages, explaining that (R. 94), inasmuch as the counterclaim had been dismissed,

> **"the subject matter and relief prayed for in defendants' Motion for Damages . . . has heretofore been ruled and finally determined."**

An appeal from the adverse ruling on the Motion for Damages was duly prosecuted to the Eighth Circuit Court of Appeals, and submitted on briefs. It is the opinion of that Court (R. 113) which petitioners seek hereby to have reviewed.

The statement of points upon which appellants relied in the Eighth Circuit Court of Appeals (R. 108) is as follows:

1. The Court abused its discretion in overruling defendants' motion for damages filed on May 22, 1939.
2. The Court erred in overruling the aforesaid motion for damages on the grounds that none of the defendants, especially defendant Public Service Commission, are proper parties to maintain an action in damages against plaintiffs for failure and refusal to deposit all of the statutory license fees with the Trustee, as they were obligated to do under the terms of the Stipulation of parties which was by the Court incorporated into its temporary restraining order.
3. The Court erred in overruling the aforesaid motion and relegating defendants to seventy-six (76) separate actions at law in many different States to recover statutory fees for the use of the public highways,

which fees the Court itself ordered plaintiffs to deposit with the Trustee named in the Stipulation of parties, and which fees plaintiffs failed and refused to deposit with said Trustee.

Without deciding the question of whether or not the Public Service Commission or the Attorney General of Missouri are proper parties to maintain the Motion for Damages, the Circuit Court of Appeals affirmed the order of the District Court overruling the Motion for Damages on the ground that, as hereinbefore stated, the three-judge district court did not abuse its discretion (R. 119), although it relegated defendants to seventy-six (76) separate actions at law in many different forums in several different States. It so held notwithstanding the fact that the damages in question, i. e., the unpaid license fees, accrued as a direct result of the improvidently issued restraining order. It held so notwithstanding the fact that the District Court deprived the State of its right to restitution of the statutory fees in question, which plaintiffs had kept in violation of the temporary restraining order. It so held notwithstanding the fact that, in the same opinion, it also held that the ancillary matter **should have been** referred back to the single judge who issued the temporary restraining order for action independent of the provisions of Section 266 of the Judicial Code. It so held notwithstanding the fact that the District Court dismissed both the counterclaim and the Motion for Damages on the grounds that it was in serious doubt that any of defendants were proper parties to maintain the ancillary cause of action against plaintiffs.

The dissenting judge (R. 119) approved the ruling that the ancillary matter **should have been** referred back to the district judge who granted the temporary restraining order, for proper action thereon independently of the provisions of Section 266 of the Judicial Code, but he also held that, because of the aforesaid ruling, the three-judge court was therefore without jurisdiction to dismiss the ancillary matter. Obviously, he dissented on the grounds that the Circuit Court of Appeals did not dispose of the ancillary litigation in a manner consistent with its principal ruling concerning such ancillary litigation.

A petition for rehearing (R. 121) was filed in the Circuit Court of Appeals. By means of said petition for rehearing,

appellants urged that the Court had overlooked the fact that its action would relegate appellants (defendants below) to seventy-six (76) separate actions at law, without the protection of the injunction bonds, in many separate forums in several different states, whereas the case upon which it relied (United Motors Service, Inc. v. Tropic Aire, Inc., Eighth Circuit, 57 F. (2d) 479) was a patent infringement action in a single-judge court, in which defendant was relegated to a court of law to try his action for damages against a single principal and his surety. The petition further pointed out several inaccurate statements made by the Circuit Court of Appeals which were not only unfair to appellants but which indicated strongly that the Court had not clearly understood the facts, and that said misunderstanding had contributed substantially to its error of judgment. The petition for rehearing also urged that appellants were entitled to damages to remunerate them for moneys expended in preparing and presenting their respective defenses. It also urged that the District Court did not base its action upon its alleged discretionary right to relegate defendants to seventy-six (76) separate causes of action in different forums in different states, but on its "serious doubts as to the right of the defendants to maintain such counterclaim" or Motion For Damages. The aforesaid petition for rehearing was denied (R. 135).

Thereafter, appellants filed their Motion for Stay of Mandate (R. 135), and the Court entered its Order Staying Mandate (R. 136).

II.

Jurisdictional Statement.

Section 240, amended, Judicial Code (28 USCA 347), invests the Supreme Court with jurisdiction to require by certiorari that the cause sought to be reviewed shall be certified to it.

The date of the judgment or decree sought to be reviewed (R. 120) is August 26, 1940. The date of the opinion (R. 113) is also August 26, 1940.

It is believed that the case sought to be reviewed is within the jurisdiction of the Supreme Court because, as hereinbefore more fully stated, it involves an ancillary cause of action for "damages", or for collection of statutory license

fees, against seventy-six (76) interstate, non-resident common carriers of property by motor vehicle, who brought their Bill In Equity to enjoin state officers and state departments from collection of said fees, provided by Section 5272, Laws of Missouri, 1931, pp. 304-316, on the ground that said fees were excessive and therefore unconstitutional. Brashear Freight Lines, Inc., et al. v. Public Service Commission of the State of Missouri, et al., 23 Fed. Supp. 865.

A temporary restraining order was in effect for a period of fifteen (15) months, during which time defendants in the injunction suit were restrained from collecting the fees in question, and during which time the aforesaid seventy-six (76) plaintiffs failed and refused to deposit the fees in question with a trustee pending the outcome of the injunction suit, as they were obligated to do under the terms of the temporary restraining order (R. 23).

The district court composed of three judges took jurisdiction of the Bill In Equity under the provisions of Section 266 of the Judicial Code. The ancillary cause of action in question is included in a Motion For Damages, which was filed by defendant state officers and departments, to collect the aforesaid statutory fees from plaintiffs on behalf of the State of Missouri.

The Circuit Court of Appeals affirmed the judgment of the District Court overruling the aforesaid Motion For Damages. It is believed that the action of the Circuit Court of Appeals is subject to review on grounds of conflict, the need of the exercise of the supervisory powers of this Court, and the need for a clear rule of procedure involving counterclaims or other cross pleadings requesting affirmative relief in injunction cases brought under Section 266.

III.

The Questions Presented.

This proceeding presents the following questions, namely:

(1) Did the three-judge court, as a specially constituted court, have power to **"retain jurisdiction"** of the subject matter of either the counterclaim or the Motion For Damages?

(2) If so, did the three-judge court abuse its discretion by overruling defendants' Motion For Damages

against plaintiffs and the surety on their two injunction bonds, thereby relegating them, state officers and departments, to seventy-six (76) separate actions at law in many different forums in numerous States?

(3) Were defendants, or any of them, proper parties to maintain a summary action against the injunction bonds for a money judgment, on behalf of the State of Missouri, for statutory license fees, collection of which had been restrained for fifteen (15) months, and deposit of which with the trustee, in accordance with the terms of the temporary restraining order, had been throughout said time refused by plaintiffs?

(4) Or, if the action of the three judges to **"retain jurisdiction"** was a valid action of a single-judge court, did the Court, as thusly constituted, abuse its discretion or otherwise dispose of the subject matter of the Motion For Damages improperly?

IV.

Reasons Relied on for the Allowance of the Writ.

1. In the absence of any rule whatsoever governing the disposition of the subject matter of the Motion For Damages, or of similar subject matter, which arises out of an action for injunction under Section 266 of the Judicial Code, whether the subject matter be in the nature of damages on the injunction bond or restitution of license fees wrongfully withheld by plaintiffs, the Supreme Court is requested to grant certiorari to afford an opportunity to declare a clear rule.

It is believed that there are no cases in the reports, arising out of causes of actions considered by specially constituted three-judge courts, which clearly indicate the procedure to be followed in a like case. Since the matter is of importance to the State of Missouri, and to these petitioners, in the administration of a statewide statute applying to freight-carrying motor carriers engaged in interstate commerce from almost every state in the nation, it is requested that the Court will grant certiorari for the purpose of affording opportunity to declare a clear rule.

2. The majority opinion is in conflict with the general rule for disposing of claims against sureties on injunction bonds in the same and other circuits.

The Court held that

> "the proper procedure in such a situation as here presented **requires** that the three-judge court, which has discharged its essential function of adjudicating upon constitutionality, **should,** upon presentation of facts by the parties, remit such ancillary litigation to the District Judge for proceedings 'to be taken independently of Section 266 of the Judicial Code, ... '"

The Court announced the foregoing rule, and immediately disregarded it. The Court disregarded the rule announced, as shown by the fact that it did not remit the ancillary litigation in question to the single district judge who granted the temporary restraining order, and who fixed its conditions (R. 23), for proceedings to be taken independently of Section 266 of the Judicial Code.'

3. The dissenting opinion holds that the foregoing rule of the majority opinion is a sound one for three-judge courts acting under Section 266 of the Judicial Code. It concludes, therefore, that, on account of the aforesaid rule, the three-judge court was without jurisdiction to dismiss the ancillary litigation, and that said litigation should have been remitted to the single district judge, who granted the temporary restraining order and fixed its conditions, for proceedings to be taken independently of Section 266 of the Judicial Code. The dissent is based upon conflict between the rule announced and the action of the Court in approving dismissal of the ancillary litigation by the three-judge district court.

4. he opinion does not criticize or overrule the action taken in a like ancillary matter in the case of Eichholz v. Hargus (Chairman of the Public Service Commission), 23 Fed. Supp. 587, wherein a three-judge district court, Western District of Missouri, proceeding under Section 266 of the Judicial Code, in a matter also in-

volving the Missouri Bus and Truck Law, took jurisdiction of a counterclaim for statutory license fees, also arising under Section 5272 aforesaid, and rendered a final money judgment in favor of the Commission. It is uncertain, therefore, whether the present opinion is sufficiently clear. It is important to the State of Missouri that a clear rule on the matter involved should be established.

5. The opinion announces the rule that ancillary litigation in injunction proceedings brought under section 266 of the Judicial Code **must be** disposed of by the single judge who granted the temporary restraining order. Such a rule is not supported by the United Motors Service case, nor by the other cases cited in the margin (R. 119). Of the latter cases involving specially constituted three-judge courts, none gave consideration to an ancillary matter in the nature of a claim for damages against sureties, arising out of an improvidently issued restraining order.

6. The opinion, by holding that ancillary litigation in injunction proceedings brought under Section 266 of the Judicial Code **must be** remitted to the single district judge who granted the temporary restraining order, is in conflict with opinions of the Supreme Court. If not in direct conflict with such opinions, it clearly reveals that the Circuit Court of Appeals has failed to interpret such opinions correctly.

7. The opinion is in conflict with opinions of the Supreme Court, and of other circuit courts, allowing defendants, as a matter of right, to recover as damages proper expenses incurred in preparing and presenting their respective defenses.

8. The opinion is based upon the erroneous assumption that the district court dismissed defendants' Counterclaim and Motion For Damages, respectively, on the ground of its supposedly discretionary right to relegate defendants to seventy-six (76) separate actions at law to collect the statutory license fees in question, whereas the three orders (R. 70, 83, 94) of the three-judge court pertaining to the Counterclaim and the Motion For

Damages, respectively, reveal that the Court dismissed those ancillary matters on the ground that it was in serious doubt that any of the defendants were proper parties to maintain an action for collection of the statutory license fees involved. The fact that the Circuit Court of Appeals did not decide the case upon the controlling question for decision, as indicated by the orders of the three-judge court, warrants the exercise of this Court's power of supervision.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 11,618, Civil, Public Service Commission of the State of Missouri, et al., Appellants v. Brashear Freight Lines, Inc., et al., Appellees, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by the Court; and for such further relief as to this Court may seem proper.

Dated October 28, 1940.

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SUPPORTING BRIEF AND ARGUMENT.

Citation of Opinion. The opinion of the Circuit Court of Appeals (R. 113) is reported as follows:

> Public Service Commission of the State of Missouri, et al. v. Brashear Freight Lines, Inc., et al., Circuit Court of Appeals, Eighth Circuit, 114 F. (2d) 1 (Adv. Op.).

Statement. A statement of the case has been included in the Petition for Certiorari contained herein.

Specification of Reasons for Allowance of Writ. The same reasons relied on for the allowance of the writ as are contained in the petition for certiorari are urged in this Supporting Brief.

Argument. (1) The majority opinion is not only in direct conflict with itself, and with the **Eichholz** case, 23 Fed. Supp. 587, which was tried in the District Court, Western District of Missouri, but it is in conflict with other cases in the same and other circuits. In the Eichholz case, a specially constituted three-judge district court, proceeding under Section 266, took jurisdiction of a counterclaim for statutory license fees under Section 5272 of the Missouri Bus and Truck Law and rendered a final money judgment in favor of the Public Service Commission.

The majority opinion holds that an ancillary matter like the one in question **must be** remitted back to the single judge who granted the temporary restraining order. If that rule is permitted to stand, then it follows that the specially constituted court of three judges did not have power to **"retain jurisdiction"** of the ancillary matter from the commencement of the cause of action for injunction, or to dismiss it afterwards.

If the action of the three judges in dismissing the ancillary cause of action shall be regarded as the act of an ordinarily constituted one-judge district court, it disposed of the matter in a manner in conflict with the general rule in effect in all circuits concerning summary action against sureties on injunction bonds. It is in conflict also with the rule in the Supreme Court, as announced in **Russell v. Farley,** 105 U. S. 433, as follows (l. c. 445):

"Other cases are referred to by the counsel of the appellants to sustain their position; but upon a careful examination we are not satisfied that they furnish any good authority for disaffirming the power of the court having possession of the case, in the absence of any statute to the contrary, to have the damages assessed under its own direction. This is the ordinary course in the Court of Chancery in England, by whose practice the courts of the United States are governed, and seems to be in accordance with sound principle. The imposition of terms and conditions upon the parties before the court is an incident to its jurisdiction over the case; and having possession of the principal case, it is fitting that it should have power to dispose of the incidents arising therein, and thus do complete justice, and put an end to further litigation."

In **Inland Steel Company v. United States,** 306 U. S. 153, 83 L. Ed. 557, 560, this Court, speaking of a specially constituted three-judge court, quoted approvingly from Russell v. Farley.

In other words, the Courts, acting as ordinarily constituted one-judge courts, or as specially constituted three-judge courts, have power to exercise a discretion at least. Usually it is fitting that the Court should **"retain jurisdiction"** to do complete justice.

Even in the case of **United Motors Service v. Tropic-Aire,** 57 F. (2d) 479, relied on as authority in the Eighth Circuit for affirming the order dismissing the ancillary cause of action, the Court clearly indicated that it would be improper to relegate a defendant to an action at law on the injunction bond if affirmative relief is asked in defendant's pleading. In that case no affirmative relief was asked in defendant's pleading; hence there was no abuse of discretion by refusing to assess damages under the injunction bond in the equity suit proper. But the Court, nevertheless, directly recognized the existing rule of **Russell v. Farley,** supra. It also said (page 485):

"Many courts of original jurisdiction have laid down rules with reference to this matter and have regarded it as the *better practice* for the court in the equity suit to

determine the damages. For instance, in Owl Creek Coal Co. v. Big Horn Collieries Co. (D. C.), 36 F. (2d) 485, the court reviews many of the federal decisions upon the subject and states that defendant may in an ancillary proceeding summarily enforce a bond against the surety, and that the defendant ordinarily will not be remitted to his remedy at law. Same doctrine Lea v. Deakin (C. C.), 13 F. 514." (Italics supplied.)

In **Owl Creek Coal Co. v. Big Horn Collieries** 36 F. (2d) 485, (Tenth Circuit), Russell v. Farley, supra, is also quoted at length. Cases from several other circuits are also quoted, showing that Russell v. Farley, supra, is uniformly followed in all the circuits. The Court said:

"From the foregoing it would appear that **all the federal courts, District, Circuit, and Appellate,** in the cases at least which are cited by counsel, *have been unanimous in adopting the suggestion laid down by the Supreme Court in Russell v. Farley.*

I see no good reason why the rule should not be adopted here, not only upon the reasoning which would seem to sustain it and which is not necessary to reiterate here, but also upon the ground of expediency and order, with the object in view of seasonably terminating all litigation possible in the same suit.

For the reasons stated, the motion to strike the second counterclaim will be overruled and denied, reserving to the litigants, respectively, their several exceptions to the adverse rulings herein indicated." (Italics supplied.)

Summarizing, if the action of the district court of three judges was that of a specially constituted three-judge court under Section 266 of the Judicial Code, it was without authority to dismiss the Motion for Damages if such specially constituted courts **must remit** to the single judge the ancillary matter; and, if it was the action of an ordinarily constituted one-judge court, it acted in conflict with the uniform rule in all circuits permitting the court, in its discretion, to render judgment for damages on the injunction bond in the main equity proceeding, **and favoring such action except in rare cases.**

It is believed that there is no reported case showing a dismissal of a defense pleading for affirmative relief, and surely no case of record where several state officers and state departments are relegated to a burdensome number of separate actions at law in many different forums in different states to collect statutory license fees which the seventy-six (76) plaintiffs were obligated to deposit with the trustee under the terms of the temporary restraining order, and which restraining order plaintiffs violated for fifteen months and thereby violated the express conditions of their injunction bonds.

In **Camp v. Boyd,** 229 U. S. 530, l. c. 551-552, the Court said:

> "A court of equity ought to do justice completely, and not by halves. (Citing cases.)
>
> One of the duties of such a court is to prevent a multiplicity of suits, and to this end a court of equity, if obliged to take cognizance of a cause for any purpose, will ordinarily retain it for all purposes, even though this requires it to determine purely legal rights that otherwise would not be within the range of its authority."

Moreover, this Court, in **Pease v. Rathbun-Jones Engineering Company,** 243 U. S. 273, l. c. 279, said:

> "The objection that a court of equity has no jurisdiction because there is an adequate remedy at law on the bond is not well taken. A court of equity, having jurisdiction of the principal case, will completely dispose of its incidents and put an end to further litigation. Applying this principle equity courts, upon the dissolution of an injunction, commonly render a summary decree on injunction bonds."

The specially constituted three-judge court in the Eichholz case, supra, applied the above rule of the Pease case.

(2) There is another line of cases which hold that a court of equity, even specially constituted three-judge courts, will retain jurisdiction to do complete justice.

In **Sterling v. Constantin,** 287 U. S. 378, 393, 394, 77 L. Ed. 375, 383, this Court said.

> "The jurisdiction of the District Court so constituted (three judges), and of this Court upon appeal, extends to every question involved, whether of state or federal law, and enables the c. rt to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case. Siler v. Louisville & N. R. Co., 213 U. S. 175, 191, 53 L. ed. 753, 757, 29 S. Ct. 451; Louisville & N. R. Co. v. Garrett, 231 U. S. 298, 303, 58 L. ed. 229, 238, 34 S. Ct. 48; Davis v. Wallace, 257 U. S. 478, 482, 66 L. ed. 325, 328, 42 S. Ct. 164; W. T. Waggoner Estate v. Wichita County, 273 U. S. 113, 116, 71 L. ed. 566, 568, 47 S. Ct. 271."

In **Railroad Commission of the State of California v. Pacific Gas & Electric Company,** 302 U. S. 388, 391, 82 L. ed. 319, 321, the Court said, in another Section 266 case:

> "Because of the federal question raised by the bill of complaint, the District Court had jurisdiction to determine all the questions in the case, local as well as federal. Siler v. Louisville & N. R. Co., 213 U. S. 175, 191, 53 L. ed. 753, 757, 29 S. Ct. 451; Louisville & N. R. Co. v. Garrett, 231 U. S. 298, 303, 58 L. ed. 229, 238, 34 S. Ct. 48; United Fuel Gas Co. v. Railroad Commission, 278 U. S. 300 307, 73 L. ed. 390, 395, 49 S. Ct. 150."

Also see **Sovereign Camp, W. O. W. v. Murphy,** 17 Fed. Supp. 651, where a three-judge court in the Eighth Circuit, acting under Section 266, followed the above principle and cited the above cases.

(3) In three cases involving **counterclaims** this Court has said that equity courts will do complete justice:

Leman v. Krentler-Arnold Hinge Last Company, 284 U. S. 448, 451, 76 L. ed. 389, 393;

Young Company v. McNeal-Edwards Company, 283 U. S. 398, 400, 75 L. ed. 1140, 1141-1142;

Chicago & Northwestern Railway Company v. Lindell, 281 U. S. 14, 17, 74 L. ed. 670, 672.

In the last cited case, the Court said:

"The adjustment of defendant's demand by counterclaim in plaintiff's action rather than by independent suit is favored and encouraged by the law. That practice serves to avoid circuity of action, inconvenience, expense, consumption of the court's time and injustice. North Chicago Rolling Mill Co. v. St. Louis Ore & Steel Co., 152 U. S. 596, 615, 616, 38 L. ed. 565, 571, 572, 14 Sup. Ct. Rep. 710; Florida R. Co. v. Smith, 21 Wall. 255, 261, 22 L. ed. 513, 514; Partridge v. Phoenix Mut. L. Ins. Co., 15 Wall. 573, 579, 21 L. ed. 229, 230. In the case last mentioned, the court, speaking through Mr. Justice Miller, said (p. 580):

> *'It would be a most pernicious doctrine to allow a citizen of a distant state to institute in these courts a suit against a citizen of the state where the court is held and escape the liability which the laws of the State have attached to all plaintiffs of allowing just and legal set-offs and counterclaims to be interposed and tried in the same suit and in the same form'."* (Italics supplied.)

This is the second effort made by petitioners to have their day in court on the merits against the seventy-six (76) respondents (plaintiffs below). It is the second time the matter has been brought to this Court.

In Public Service Commission of the State of Missouri, et al. v. Brashear Freight Lines, Inc., et al., 306 U. S. 204, 83 L. Ed. 608, the Court dismissed outright the appeal of these petitioners. Although appropriate relief was requested, in case the Court should find the appeal to be taken to the wrong court, such request was not granted. In the aforesaid appeal there was a judgment and decree of the specially constituted three-judge court denying the injunction and dissolving the temporary restraining order. It was an unquestioned proper judgment for a direct appeal.

Believing that plaintiffs below would prosecute a direct appeal from the adverse ruling on the injunction, **and believing that the jurisdiction of the Supreme Court thereof invoked the jurisdiction of that Court on the ancillary matter,** an appeal was prosecuted by said officers to the Supreme Court,

only. The Court dismissed the appeal outright for want of jurisdiction. Within a very short time afterwards the Court, however, following Oklahoma Gas and Electric Company v. Oklahoma Packing Company, 292 U. S. 386, 78 L. Ed. 1318, made an appropriate ruling saving three other appellants from improvident direct appeals. See William Jameson & Co. v. Morgenthau, 307 U. S. 171, 83 L. Ed. 1189; Rorick v. Board of Commissioners of Everglades Drainage District, 307 U. S. 208, 83 L. Ed. 1242; Wilentz v. Sovereign Camp, W. O. W., 306 U. S. 573, 83 L. Ed. 994.

IN CONCLUSION, it is requested that the Court, for the reasons herein set forth, will grant certiorari and fix a proper and clear rule for procedure in matters like the one herein presented.

Respectfully submitted,

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